

## Securities and Exchange Commission

## § 270.23c-1

### **§ 270.22d-1 Exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule.**

A registered investment company that is the issuer of redeemable securities, a principal underwriter of such securities or a dealer therein shall be exempt from the provisions of section 22(d) to the extent necessary to permit the sale of such securities at prices that reflect scheduled variations in, or elimination of, the sales load. These price schedules may offer such variations in or elimination of the sales load to particular classes of investors or transactions, *Provided, That*:

(a) The company, the principal underwriter and dealers in the company's shares apply any scheduled variation uniformly to all offerees in the class specified;

(b) The company furnishes to existing shareholders and prospective investors adequate information concerning any scheduled variation, as prescribed in applicable registration statement form requirements;

(c) Before making any new sales load variation available to purchasers of the company's shares, the company revises its prospectus and statement of additional information to describe that new variation; and

(d) The company advises existing shareholders of any new sales load variation within one year of the date when that variation is first made available to purchasers of the company's shares.

(Secs. 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a)))

[50 FR 7911, Feb. 27, 1985]

### **§ 270.22d-2 Exemption from section 22(d) for certain registered separate accounts.**

A registered separate account, any principal underwriter for such account, any dealer in contracts or units of interest or participations in such contracts issued by such account and any insurance company maintaining such account shall, with respect to any variable annuity contracts, units, or participations therein issued by such account, be exempted from section 22(d) to the extent necessary to permit the sale of such contracts, units or partici-

pations by such persons at prices which reflect variations in the sales load or in any administrative charge or other deductions from the purchase payments; *Provided, however, That* (a) the prospectus discloses as precisely as possible the amount of the variations and the circumstances, if any, in which such variations shall be available or describes the basis for such variations and the manner in which entitlement shall be determined, and (b) any such variations reflect differences in costs or services and are not unfairly discriminatory against any person.

(Secs. 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a)))

[40 FR 33970, Aug. 13, 1975. Redesignated at 50 FR 7911, Feb. 27, 1985]

### **§ 270.22e-1 Exemption from section 22(e) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.**

(a) A registered separate account, shall during the annuity payment period of variable annuity contracts participating in such account, be exempt from the provisions of section 22(e) of the Act prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, with respect to such contracts under which payments are being made based upon life contingencies.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a-6)

[34 FR 12696, Aug. 5, 1969]

### **§ 270.22e-2 Pricing of redemption requests in accordance with Rule 22c-1.**

An investment company shall not be deemed to have suspended the right of redemption if it prices a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of Rule 22c-1.

[50 FR 24764, June 13, 1985]

### **§ 270.23c-1 Repurchase of securities by closed-end companies.**

(a) A registered closed-end company may purchase for cash a security of

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which it is the issuer, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.

(3) If the security to be purchased is junior to any class of outstanding security of the issuer representing indebtedness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

(4) The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

(5) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.

(6) The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.

(7) The issuer discloses to the seller or, if the seller is acting through a broker, to the seller's broker, either prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.

(8) No brokerage commission is paid by the issuer to any affiliated person of the issuer in connection with the purchase.

(9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.

(10) If the security is a stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.

(11) The issuer files with the Commission, on or before the tenth day of the calendar month following the month in which the purchase occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities under this rule sent or given during the month by or on behalf of the issuer to ten or more persons. Form N-23C-1 is hereby prescribed as the form to be used for such report.

(b) Notwithstanding the conditions of paragraph (a) of this section, a closed-end company may purchase fractional interests in, or fractional rights to receive, any security of which it is the issuer.

(c) This rule does not apply to purchase of securities made pursuant to section 23(c)(1) or (2) of the Act (54 Stat. 825; 15 U.S.C. 80a-23). A registered closed-end company may file an application with the Commission for an order under section 23(c)(3) of the Act permitting the purchase of any security of which it is the issuer which does not meet the conditions of this rule and which is not to be made pursuant to section 23(c)(1) or (2) of the Act.

(d) This rule relates exclusively to the requirements of section 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the issuer were issued.

[Rule N-23C-1, 7 FR 10424, Dec. 15, 1942]

CROSS REFERENCE: For interpretative release applicable to § 270.23c-1, see No. 78 in tabulation, part 271 of this chapter.

**§ 270.23c-2 Call and redemption of securities issued by registered closed-end companies.**

(a) Notwithstanding the provisions of § 270.23c-1 (Rule N-23c-1), a registered closed-end investment company may call or redeem any securities of which it is the issuer, in accordance with the terms of such securities or the charter,